

William Smith Esq.

SIR CORNELIUS VERMUYDEN'S

AGREEMENT

WITH

KING CHARLES

FOR DRAINING

HATFIELD CHACE, &c.

*As a fine cultivated District, of Wheat
and potatoes growing Land, to the Honour of
its projector, it has long since become*



Doncaster 1839

new produce

DONCASTER.

Printed by D. BOYS.

1794.

Price Two SHILLINGS.



Hlor:

TERM OF St. MICHEAL
IN THE 6th YEAR OF KING
CHARLES.

2^d March 1625

WHEREAS Sir Cornelius Vermuyden of London, Knight, Fee Farmt. To his Majesty of the Lordships or Manors of *Hatfield* in the County of *York*, and of Divers other Manors, Lands, and Tenements in the said County of *York*, did this present Term, exhibit his English Bill into this Court thereby shewing that whereas our sovereign Lord the King's Majesty that now is being in the second Year of his Reign lawfully seized in his Demesne, as of Fee, as in the Right of his Crown of *England* and Dukedom of *York*, of, and in, the said Lordships, or Manors of *Hatfield*, and *Thorne*, and the Chace called *Hatfield Chace* and *Ditch Marssh* with the Appurtenances and of divers Wates, Waste Grounds, and Commons to the said Lordships and Manors of *Hatfield* and *Thorne* belonging or there unto near adjoining situate, lying, and being within the said County of *York*, a great Part whereof was then submitted to be furrounded and drowned with Water in such a Manner that little or no Benefit at all could, or might, be made thereof unless special Care was taken for Inning and Draining the same; and whereas the said Sir Cornelius Vermuyden by Articles of Agreement indented, made, and concluded upon, the four and twentieth Day of March, in the said second Year of his Majesty's Reign between his Majesty of the one Part, and the said Sir Cornelius Vermuyden of the other Part, the said Sir Cornelius Vermuyden did promise and undertake to do his best Endeavours both by himself and such other

B

Persons

Michaelmas 6th year
2^d year of the reign
1627

4 1/2 years

*By writing to let the said land be sold
at the said place in the Duchy of York the said land was
sold for 30 £. 10 s. 6 d.
The said land was sold for 30 £. 10 s. 6 d.
this returned 2^d June*

1539

*Now some of
the most good
= active land in
England*

Mr. Smith

2^d year of the reign

Persons as he shou'd employ in the said Work to drain and lay dry the said drown'd and surrounded Grounds in such Manner as to make the same fit for Tillage, or Pasture, in Manner aforesaid. And his Majesty in Consideration thereof did by the same Articles of Agreement for himself, his Heirs, and Successors, promise and grant, that the said Sir *Cornelius Vermuyden*, his Heirs, and Assigns, or such other Person, or Persons as the said Sir *Cornelius Vermuyden* shou'd nominate and appoint in that Behalf and their Heirs and Assigns shou'd have, hold, and for ever enjoy, one full third Part, in three Parts to be divided, of all and singular the said surrounded and Waste Grounds, to be of equal Value with each of the said other two Parts; and that his Majesty, his Heirs and Successors upon the gaining thereof shou'd, and wou'd, grant and procure the said third Part to be granted, and lawfully convey'd, and assured unto the said Sir *Cornelius Vermuyden* and his Heirs, or to the Parties by the said Sir *Cornelius Vermuyden* to be named as aforesaid and their Heirs, to be holden of his Highness, his Heirs and Successors, as of his Manor of *East Greenwich*, in the County of *Kent*, in free and common Soccage, with Divers other Liberties and Privileges granted to the said Sir *Cornelius Vermuyden* and in the same Article mention'd. And for that, Divers Persons did claim common of Pasture in some Part of the said Lands to be drain'd and dried as aforesaid, his Majesty by the same Articles did agree, and was graciously pleased to grant, and agree, that his Majesty's Commons shou'd go forth under the great Seal of England to certain Persons to be named and appointed to create, and deal, agree, and conclude, with the said Persons claiming Commons concerning the said Commons and Claim to the same as by the said Articles ready to be shewed to the Court may appear; and by his said Bill shewing, that according to the said Articles to be performed on his, the Sir *Cornelius Vermuyden's* Part, he the said Sir *Cornelius Vermuyden* employed a great Number of Workmen, and expended extraordinary great Sums of Money, in and about, the Inning and

and Draining, laying and keeping Dry, of the said Wastes and surrounded Grounds: For that the said Grounds ^(in 4 years) are made more fit for Tillage and Pasture than formerly they were, and so more profitable according to his Majesty's Desire express'd in the said Letters Patent; and that his Majesty hath accordingly conveyed the third Part unto him the said Sir *Cornelius Vermuyden* and his Heirs, and to others appointed by the said Sir *Cornelius Vermuyden* thereunto; and that his Majesty likewise in further persuance of the said Articles was also graciously pleased to grant, and did grant Divers Commissions under the great Seal of *England* directed to Divers honourable Persons, and others of Worth and Quality; whereof one was directed to the Right honourable *William* Lord Viscount *Ayre*, *John* Lord *Savile* of *Pontefract*, Sir *Ralph Hansby*, and Sir *Thomas Fanshawe*, Knight, to treat, deal, conclude and agree with the Tenants and Inhabitants of all the Townships, Villages, Hamlets, Parishes, and Precincts, in and adjoining the same Waste and surrounded Grounds, which did claim to have Right of Common in the same, touching what Part of the Commons to be improved they wou'd accept of as in full Satisfaction of their Right, and Title, in and to, the Residue of the said Waste and commonable Grounds; which Commissions last named, after much Labour and Pains by them taken in that Business, did make a final conclusion and Agreement with the greater Part of the said Tenants and Inhabitants concerning the same, and did allot, divide, and set out, unto them severall Quantities and Proportions of the same Waste and surrounded Grounds to be by them held and enjoyed in severally divided from the other two Parts as by the Certificate of the said Commissions concerning their Doings and Proceedings in that Behalf returned into this Court and here remaining amongst the Records it doth and may appear. And the said Sir *Cornelius Vermuyden* further shewed, that the said Sir *Cornelius Vermuyden*, since the Time of the Contract made with his Majesty as aforesaid, having purchased of his Majesty in Fee Farm for valuable Consideration,

In 4 years

Speculated in the purchase of the Kings

deration, at a great improved Rent, the said Manors, or Lordships of *Hatfield* and *Thorne*, and the Residue of all and singular the said Wastes and surrounded Grounds, divers Controversies, and Differences, did arise between the said Sir *Corne'ius Vermuyden* and his Assigns and his several Parts, of the said Manor of *Hatfield* of the one Part, and the Tenants and Inhabitants of the said Manor and of the Towns of *Hatfield*, *Dunscroft*, *Woodhouse*, *Tudsworth*, *Thorne*, *Sykehouse*, *Fishlake*, and *S'ainforth*, in the said County on the other Part; as well concerning their Copyholds within the said Manor and Towns, as Demands of further perfecting of the said Work undertaken by the said Sir *Corne'ius Vermuyden* for draining the surrounded Grounds their and the Proportions and Allotments claimed to be due to the said Inhabitants and the securing of their Grounds from further Damage by Pretence of Draining by Reason of a new Bank, or Wall, by him the said Sir *Corne'ius Vermuyden* lately made, by Occasion whereof Divers Complaints were made before the Right honourable the Lords of his Majesty's most honourable privy Council; and that thereupon it pleased their Lordships in, or about, the Month of *June* last past to refer the same to the Right honourable *Thomas* Lord Viscount *Wentworth*, Lord President of his Majesty's Right honourable Council established in the North Parts, and one of his Majesty's most honourable privy Council; *John* Lord *Darcy*, and Mr. Justice *Hutton*, or any two of them, whereof the said Lord Viscount *Wentworth* was appointed to be one; and by Virtue of which Reference the said Lord Viscount *Wentworth*, and Lord *Darcy*, met at *Hatfield* aforesaid on the eleventh Day of *September*, in the Year of our Lord 1630, and viewed the Works made by the said Sir *Corne'ius Vermuyden* for draining the said Grounds, and also Wall, or Bank, lying in the North West Side of the River *Dunn* beside *Fishlake* and *Sykehouse*; and having heard the Allegations on both Sides at large, with the Assistance of Sir *Robert Hearth*, Knight, his Majesty's Attorney General, and of Sir *Thomas Fanshaw*, Knight, his Majesty's Surveyor,

*Between
the said Sir
Cornelius Vermuyden
and
the Tenants and
Inhabitants
demanding
further perfection*

Surveyor, and upon Advise ment had concerning the Premises they the said Viscount *Wentworth*, and Lord *Darcy*, did set down some Propositions and Conclusions in Writing such as they then thought fit and necessary to be observed and kept in all Parts and published the same as their first Order and Award concerning the said Premises; but by Reason of some Exceptions taken in some few Points thereof there arose some Difference between the said Sir *Cornelius Vermuyden* and the said Tenants; howbeit the said Sir *Cornelius Vermuyden* sheweth, that shortly after, viz; in this present Month of *November*, he the said Sir *Cornelius Vermuyden* and the said Tenants have made a mutual and final Agreement amongst themselves touching the Parts of the said Award to be performed by him the said Sir *Cornelius Vermuyden* and have fallen upon some other and further Agreement amongst themselves to be performed; and to the End the Tenants and Inhabitants of the said several Townships for the Time now being, and such as hereafter shou'd be, or might be, ordered and decreed by this Court to stand to and perform the Part of the said Award and the said further Agreements on this Behalf to be observed, the said Sir *Cornelius Vermuyden* exhibited his said Bill into the Court against *Robert Portington, Thomas Todd, Robert Foster, Richard Taylor, Samuel Wilkinfon, and Robert Shann*, Tenants and Inhabitants of the said Manor or Lordship of *Hatfield* and *Thorne*, who are such as undertake, as well for themselves as for the Rest of the Tenants and Inhabitants of the several Towns, Villages, and Hamlets of *Hatfield, Thorne, Stainforth, Woodhouse, Dunscroft, and Tudworth*, to which said Bill the said Defendants appeared and answered, and by the said Answers confessed all the several Articles of the said Award in the said Bill expressed; that they, for their Parts, and their Heirs, and the Rest of the Tenants and Inhabitants of the several Towns, Villages, and Hamlets, aforesaid and for their several Heirs, did, consent to, and allow of, such Parts of the said Award, and such further Agreements as in the said Bill of Sir *Cornelius Vermuyden*

agreed Decr
1630

is mentioned and where and are ready and willing to stand to, abide and perform, the same, in all Points according to the true Intent and Meaning of the same; and that such Part of the same Award, and such further Agreements as are expressed, and set forth, in the said Bill may be ratified and confirmed by the Order and Decree of this honourable Court accordingly. And all Parties, their Heirs and Assigns, to be bound and concluded thereby, if this honourable Court shou'd so think fit and order the same. And to the End also that the said Sir *Cornelius Vermuyden* might be ordered and decreed by this Court to perform the Part of the said Award and Agreement on his Part to be performed, divers, the Tenants and Inhabitants of the said Manor, or Lordship, and of the Towns, Villages, and Hamlets, aforesaid viz; *Robert Portington* Esquire, *Robert Yarborough*, and *Thomas Vincent* Esquires; *Thomas Bosville* Gentleman, *Roger Portington* Gentleman, *Robert Leageut*, *Francis Ricarde*, *John West*, *Robert Beaumont*, *Thomas Moor*, *Richard Hartley*, *John Moor*, and *Francis Hanson*, Tenants and Copyholders in the Towns of *Hatfield* and *Dunscroft* within the Manor of *Hatfield* aforesaid in the County of *York*: *William Woodcock*, *John Elwick*, *John Madue*, *William Todd*, *Robert Chester*, and *Charles Wommuke*, Freeholders, Copyholders, and Tenants in the Township of *Woodhouse* in the said Manor; *Henry Parkin*, *Park Cressye*, and *Thomas Jackson*, Gentlemen; *Henry Cutlif*, *Robert Smith*, *Thomas Marloche*, and *Thomas Ash ey*, Freeholders, Copyholders, and Tenants, in *Stainforth* within the said Manor; *Henry Cook*, Tenant, Freeholder and Copyholder in *Tudworth* in the said Manor; *Thomas Todd* Clerk, *Edward Stear*, *Richard Taylor*, *Samuel Taylor*, *John Stear*, *Robert Foster*, and *John Sterkey*, Gnetlemen *Thomas Darlinge*, *Edward Ballance*, *Anthony Empringham*, *Thomas Darlinge* the Younger, *Henry Pool*, *Edward Foster*, *James Ferreby*, *Robert Stevenson*, *Steven Walker*, *Edward Ferye*, *Thomas Lawesling*, and *Thomas Margrave*, Tenants, Freeholders, and Copyholders of *Thorne* within the said Manor, did likewise exhibit their English Bill
into

into this Court against Sir *Cornelius Vermuyden* thereby setting forth that his Majesty was seized aforesaid, of and in, the Lordship or Manor of *Hatfield* and *Thorne* and the Chace called *Hatfield Chace*, and *Dick Marsh*, with the Appurtenances, and of divers Wates, and Waste Grounds, and Commons to the said Lordships or Manors of *Hatfield* and *Thorne* belonging, and thereunto adjoining in the said County of *York*; and that a great Part thereof was in the second Year of his Majesty's Reign subject to be surrounded and drowned with Water, and that in Consideration Sir *Cornelius Vermuyden* aforesaid, did undertake to drain and dry the said Grounds, his Majesty did agree to convey to him and his Heirs the third Part thereof, and that they the said Tenants did claim right of Commonage in Part of the said Lands, and that his Majesty was pleased his Commission shou'd go forth to deal, and agree, with the said Tenants and Commoners touching the Common by them claimed as formerly expressed in the Bill of the said Sir *Cornelius Vermuyden*; and that one Commission was directed to the Right honourable *William* Lord Viscount *Ayre*, *John* Lord *Savile* of *Pontefract*, Sir *Ralph Hansby*, and Sir *Thomas Farshaw*, Knights; and that the said Commissioners did allot, and set out, unto them the said Tenants for themselves, and the Rest of the Tenants and Inhabitants of *Hatfield*, *Thorne*, *Stainforth*, *Danscroft*, *Woodhouse*, *Tudworth*, *Fishlake*, and *Sykehouse*, Parcels and Quantities of the said Wastes and surrounded Grounds, to be by them enjoyed as by the Certificate of the said Commissioners returned into the Court appearin. And that the said Sir *Cornelius Vermuyden* having purchased the said Lordships and Manors and all the said Wastes and surrounded Grounds of his Majesty; Controversies did arise between the said Sir *Cornelius Vermuyden* and them the said Plaintiffs, and the Rest of the said Tenants and Inhabitants, and that Complaints thereof was made before the Right honourable the Lords of his Majesty's most honourable privy Council; and that they in and about June last were pleased to refer the Same to the Right

Right honourable the Lord Viscount *Wentworth*, the Lord *Darcy*, and Mr. Justice *Hutton*, or any two of them, whereof the said Lord Viscount *Wentworth* to be one; and that the said Lord Viscount *Wentworth*, and Lord *Darcy*, met at *Hatfield* the eleventh Day of *September* last; and having viewed the said Work, and herd the Allegations on both Sides, they did set down such Propositions and Conclusions in Writing as they then thought fit and necessary as a final Order and Award therein; and that some Exceptions being taken to some Points thereof, some Differences did arise between the said Sir *Cornelius Vermuyden* and them the said Plaintiffs and others, and that notwithstanding afterwards viz; in this present Month of *November*, they, the said Tenants in behalf of themselves and the Rest of the said Tenants, have made a material, absolute, and final Agreement, touching some Parts of the said Award to be performed as well by them the said Tenants as by the said Sir *Cornelius Vermuyden*, and touching some other Demands and Propositions of the said Plaintiffs not mentioned in the said Award, the Parts of which said Award, and the said further Agreement, are in the said Bill at large expressed, and by the said Bill further shew that altho' the said Tenants are ready and willing to perform the Parts of the said Award and the said Agreements for themselves and the Rest of the Tenants and Inhabitants of *Hatfield* and *Thorne*, *Dunscroft*, *Stainforth*, *Tudworth*, and *Woodhouse*; albeit the said Sir *Cornelius Vermuyden* did agree to the Part of the said Award, and further Agreement yet the said Sir *Cornelius Vermuyden* doth refuse to stand to and perform the Contents thereof unto which said Bill the said Defendant Sir *Cornelius Vermuyden* answered; confessing all the material Points and Parts of the said Bill and denyeth that he doth refuse to stand to and perform the said Part of the said Award and the said further Agreement, but saith that he is willing and ready for his Part, to stand to, abide, and perform the Parts of the same Award, and the said further Agreement made after the said Award, in such a Manner as is set down

in the said Tenants Bill, according to the true Inten^t and Meaning thereof; and that the said Defendant, his Heirs and Assigns, shall be bound, and concluded thereby, so as the said Tenants, and the Rest of the said Tenants and their several Heirs and Assigns respectively, may be likewise tied and concluded by some. And to that End, the said Defendant is willing that the Parts of the same Award, and the said further Agre^ements, may be decreed by this honourable Court to be observed and performed of all Sides in all Points accordingly as by the said several Bills and Answers thereunto remaining in this Court doth more at large appear; upon opening of which said several Bills and Answers this present Day in Court in the Presence of the Counsel on both Sides; and the Court, being humbly desired that a final Order and Decree might be made therein; do thereupon appoint, that the Parts and Points of the said Award and the said further Agre^ements be set down as they are agreed to be observed on each Side, the Part of which said Award and the said further Agre^ements followeth in those Words viz; *IMPRIMIS*; that as well the said Sir *Cornelius Vermuyden* and his Assigns of any Part or Parts of the said Manor, as the said Tenants and Inhabitants and every of them shall be acquitted and discharged of all Tresp^asses, and Damages, done by them; or any of them, to, or against, the adverse Part; or any of them, and that all Suits depending, or prosecuted in any Court of Justice between the said Parties; or any of them, by Occasion of any of the said Differences, shall cease, and be no further proceeded in; and such of the said Parties as had, or have, any such depending, or prosecuted against them, at the Suit of his Majesty, for any thing done about the Premises, shall attend his Majesty's Attorney General, who was requested by the said Viscount *Wentworth*, and the Lord *Darcy* to take Orders for with drawing those Suits. Item that the said Sir *Cornelius Vermuyden*, his Heirs, or Assigns, shall confirm unto the said Tenants and Inhabitants, their Heirs, and Assigns respectively, their Copyhold Lands and

D

T^estimon^t

Tenements held of the said Manor without Admeasurement, and their Customs together with the Certainty of their Fines, and Liberty to cut Wood in their Copyholds, and to sell and dispose of the same at their Liking, according as hath been accustomed; and that no Forfeiture of any of the said Copyholds shall be taken for any Cause given before the Tenants grant of the said Manor from the Kings Majesty, nor that the said Sir Cornelius Vermuyden, his Heirs, or Assigns, shall take Advantages of any Cause of Forfeiture given until that present by any of the said Tenants for Breach of Fealty in opposing their Lord. Item that the said Tenants, their Heirs and Assigns shall have their Turf Moors with all the Profits thereunto belonging throughout the Waste of Turbary in such Manner and Form as they usually heretofore had, and their Copyhold Lands their without Admeasurement and that there may be sufficient Ways left to the said Moors for Carriage and the Ways betwixt Bridge Dyke and Lane Close to be enlarged if there appears upon View of Persons to be appointed by the said Viscount Wentworth, Lord Darcy, and Mr. Justice Hutton, or two of them, whereof Lord Viscount Wentworth to be one; that there is Cause of Enlargement, and those that come to build, or dwell, upon the Grounds of the said Sir Cornelius Vermuyden, his Heirs, or Assigns, are only to have Liberty to cut Turf on one thousand Acres of Turf Moor towards Crowle, and five hundred Acres towards Sandtoft, next adjoining to Wroof or Wrodcarr to be set out by Metes and Bounds by the Consent of the said Parties, or by Persons appointed by the said Referees, or two of them, whereof Lord Viscount Wentworth to be one; and the Turbary called the Lord's Moors are likewise reserved to the said Sir Cornelius Vermuyden and his Assigns. But the said Sir Cornelius Vermuyden and the new Inhabitants are to take Turf in the said Places only for their own burning and not for Sale. Item; that the Tenants of the said Manor and the Members thereof shall have unto them and their Heirs, or such Persons and their Heirs as they shall appoint,

appoint, their former Allotments for their Common confirmed unto them according as they were first set out by the first Commissioners *John Lord Savile* and others on the fourteenth Day of *March* in the Year of our Lord 1627, with an Addition of 200 Acres more in *Ditch Marsh*, and 403 Acres of Land in *Fern Carr*, to be assured unto the said Tenants in Exchange for 403 Acres in *West Moor*: All which Parcels of Ground allotted, and to be allotted and exchanged with the said Tenants, shall be drained, and so kept, according to the Articles made between his Majesty and the said Sir *Cornelius Vermuyden*; and the said Sir *Cornelius Vermuyden* and his Heirs, upon Request, shall convey, or cause to be conveyed, unto such Feoffees and their Heirs as the said Tenants, or the most Part of them, shall nominate; such of the said *Moors* not holden by Copy of Court Roll and other Grounds within the said Manor as are allotted to, and for the said Tenants to be holden in Fee and common Soccage, Item; that the said Tenants cause *Ditch Marsh* to be surveyed, so as it may appear that they shall have the full Moiety thereof and 200 Acres more; and the same to be set forth by the said Referees, or any such two of them as aforesaid, or by such Persons as they shall appoint; so as it may be conveniently for *Sykehouse* and *Fishlake*, as well as for *Thorne*; wherein Reguard shall be had to accommodate the said Sir *Cornelius Vermuyden* and his Assigns with Conveniency, as well for any new draining to be made therein as otherwise, without Prejudice to the said Tenants. And if thereupon any Grounds sown with Rape shall be allotted to the Tenants, the said Sir *Cornelius Vermuyden* shall hold them until after the Time for gathering in the Rape the next Summer. Also the said Tenants shall dispasture such of the said Lands in *Ditch Marsh* as by the said Order or Award shall be assigned unto the said Sir *Cornelius Vermuyden*, only until the fifth Day of *June* next, and then the said Sir *Cornelius Vermuyden* to enter thereunto. Item; that the said Tenants and Inhabitants shall have all Ways and Passages continue to them, their Heirs and Assigns, in Common

Colingborne 1699
 Com. 1699
 200 Acres more
 403 Acres more

mon as formerly they had, and that they be not charged with Payment of any Toll or Passage thro' the Locks, or any other Passage, by Water, or by Land. Item; that the said Sir Cornelius Vermuyden, his Heirs and Assigns, shall cause all their Grounds to be sufficiently fenced and inclosed against the Allotments of the Tenants. Item; that the said Tenants and Inhabitants, their Heirs and Assigns, shall at all Times hereafter be discharged of the Deer, and all the Laws of Fereft and Chace. And the further Propositions and Demands of the said Tenants, and assented unto by the said Sir Cornelius Vermuyden, not mentioned in the said Award, are as follows; viz; That such of the Tenants and Inhabitants as at any Time formerly have Paid any Rent to the Crown, or any other Rents, or other Duties, for the new inclosed Grounds commonly called *Thorne Ings*, or *Middlings*, lying near *Hains Hill*, shall be for ever hereafter fully and wholly discharged and freed from paying any more any such Rents, or Duties. And it is further agreed, that in such Places as the said Sir Cornelius Vermuyden, his Heirs, or Assigns, have digged, or shall at any Time hereafter dig up Passages, he the said Cornelius Vermuyden, his Heirs and Assigns, shall make, and for ever maintain, Passages again in all Places near adjoining to the former and as convenient as they were. And it is likewise agreed, that the said Tenants and Inhabitants, their Heirs and Assigns, shall be for ever hereafter discharged of all Rents heretofore granted to his Majesty for any Adjustments in any Part of the said Wastes. And it is also agreed that neither the said Sir Cornelius Vermuyden and his Tenants of the two Parts improved, nor their Heirs and Assigns, shall have any Common in the third Part allotted and set out for the Use of the Tenants and Commonry, and that the Tenants and Inhabitants of the several Towns, Villages, and places aforesaid, their Heirs and Assigns, shall have free Liberty to dig Clods Earth and Gravel in, and upon, the said High Ways and Lands, in Places fit and convenient for their necessary Uses. And that the said Sir Cornelius Vermuyden and his Heirs shall convey,

and

*Tenants
get discharged
of their rents*

*Tenants
are discharged
of their rents
herein*

and assure, unto the said Tenants and Inhabitants, their Heirs and Assigns, a Parcel of Marsh Ground called by the Name of *Bramwith Marsh*, over and above the several Parcel of Marsh Ground allotted to them by the Certificate of the said *John Savile* and others, and that the Tenants and Inhabitants of the Manor of *Crowle* shall have; and enjoy, to them and their Heirs, 400 Acres of the said *Turf Moors* for their Turbary; In which said 400 Acres the said Tenants and Inhabitants of the said Manors and Lordships of *Hatfield* and *Thorne*, are not to cut, or Grave, any Turfs; and the said Sir *Cornelius Vermuyden* is to allow unto the said Tenants and Inhabitants, by Way of Exchange, 100 Acres of Ground lying in the severals, for 100 Acres of Ground lying in *Ditch Marsh*, formerly allotted unto them; And that the Drain, which by Agreement is to be made by the said Sir *Cornelius Vermuyden* about the *West Moor*, shall be made and finished before the twenty fourth Day of *August* in the Year of our Lord 1631; and that the said Sir *Cornelius Vermuyden* and his Heirs, and his and their Tenants and Farmers of such Copyhold Tenements as he hath lately purchased from

Zamquere, one of the Daughters of the said Viscount *Ayre*, shall enjoy common of Pasture and Turbary within the said Wastes and Moors allotted unto the said Tenants according to the Custom of the said Manors. Also it is agreed between the Parties of both sides, that according to the Certificate of the said Lord Viscount *Ayre*, Lord *Savile*, and others, in that Behalf made, and remaining of Record in the Court, the said Tenants and Inhabitants of the said Manors, or Lordships, shall and may have and enjoy these Parcels of Common following viz; the *West Moor*, containing 893 Acres; the *Lings*, containing 210 Acres; *Woodfree Carr*, *Brickhill Carr*, and *Hall Hill Carr*, containing 347 Acres; the *Rample Carr*, containing 84 Acres; the *Clowns*, containing 467 Acres; *East Tram'lings*, containing 202 Acres; *Brier Holm* and *Kirton Carr*, containing 380 Acres; *Bramwith Marsh*, containing 35 Acres; *Burger* and *Hatfield Moor*, containing 130 Acres; *Hatfield Hills*, containing

Drain

1431

Common

893

210

347

84

467

202

380

35

130

2748

Acres
2748

(14)

66
65
138
15
200
3232

containing 66 Acres; One Piece of Ground known by the Name of *Common* on the further Side of the Water, containing 65 Acres; the *West Nabb*, containing 138 Acres; *Kirk Town Nabb*, containing 15 Acres; the *Moiety of Ditch Marsh* and 200 Acres over; over all which said several Parcels of Ground the said Tenants and Inhabitants are, by the said Certificate, to hold to them and their several Heirs in Lieu and Recompence of their several Claims of *Common* in all the Rest of the said Wastes and commonable Grounds; upon Consideration had of the said Part of the said Award and of the said further Agreements, and of the several Parts thereof. It is this present Day ordered and Decreed, by this Court, in the Presence of the Counsel, and the Parties on both Sides, and with their mutual Consents and Agreements, that the Parts of the said Award, and the Agreement before particularly expressed, and Certificate of the said Viscount *Avra*, Lord *Savile* and others, and every Part and Parcel thereof, as are before expressed; shall from henceforth in all Things be observed and performed, fulfilled and kept, as well by the said Sir *Cornelius Vermuyden*, his Heirs and Assigns, as by the Parties, Tenants and Inhabitants, in this present Decree before named; And all other the several Tenants and Inhabitants of the several Towns of *Hatfield*, *Thorne*, *Dunscroft*, *Stainforth*, *Woodhouse*, and *Tudworth*, and their several and respective Heirs. And it is also ordered and decreed by the like Consent of Parties aforesaid, and of their Counsel learned, that as well the said Sir *Cornelius Vermuyden*, and his Heirs and Assigns, as the Tenants and Inhabitants before named, as all other the Tenants and Inhabitants of the several Towns, Villages, and Hamlets, before mentioned, that now be, and that hereafter for the Time being shall be, and their Heirs and Assigns shall for ever hereafter be bound to observe and perform the said Award and Agreement by Virtue of this present Decree.

BARON

DENHAM

BARON

TREVER

BARON

The

The Right Honourable HENRY Viscount
IRWIN, Appellant.

WILLIAM SIMPSON, THOMAS MORRIS,
THOMAS HILL, EDWARD FOSTER,
RICHARD MIDDLEBROOKE, WILLIAM
MIDDLEBROOKE, THOMAS MIDDLE-
BROOKE, and SAMUEL MAGGOT,
Respondents.

The RESPONDENTS CASE.

To be heard at the Bar of the House of Lords, on
Monday the fourth Day of December 1758.

The DECREE Affirmed.

KING Charles the First being seized in Fee, in Right of his Crown of *England*, of and in the Lordship or Manor of *Hatfield*, and of the Chace called *Hatfield Chace* and *Ditch Marsh*, with the Appurtenances, and of divers Waste Grounds and Commons to the said Lordship or Manor belonging, or thereunto near adjoining, in the County of *York*, great Part whereof was then subject to be drowned with Water, so that little or no Benefit could be made thereof without draining the same; thereupon by Articles of Agreement, dated the twenty fourth Day of *March*, in the second Year of his Reign, and made between his said Majesty of the one Part, and *Cornelius Vermuyden* Esquire, afterwards *Sir Cornelius Vermuyden*, Knight, of the other Part; the said *Sir Cornelius Vermuyden* undertook to drain the said drowned Grounds, so as to make the same fit for Tillage or Pasture, and to keep them for ever in such Condition;

24 March, 2 Cha. 1
Sir Cornelius Vermuyden's Agreement with the King for draining Hatfield Chace and Ditch Marsh.

Condition; and in Consideration thereof his said Majesty agreed, that the said Sir *Cornelius Vermuyden*, his Heirs and Assigns, or such other Persons as he should appoint, their Heirs and Assigns, should have one full equal third Part of all the said drowned Grounds; and that his Majesty, upon gaining thereof, would grant the said third Part to the said Sir *Corne'ius*, and his Heirs and Assigns, or to such other Persons as aforesaid, to be holden of his Majesty, his Heirs and Successors, as of his Manor of *East Greenwich*, in the County of *Kent*, in free and common Soccage, and taking Notice, That the Tenants of the said Manor did claim Common of Pasture in the Lands so to be drained as aforesaid; his Majesty agreed, that a Commission should issue, under the Great Seal, to certain Commissioners to treat and agree with the Persons claiming Common concerning the said Common, and claim to the same.

The King's Conveyance of one Third to Sir *Cornelius Vermuyden*.

Commission to Lord *Ayre* and others to treat with the Tenants and Inhabitants.

The Commissioners Agreement with the Tenants and Allotment.

Sir *Cornelius's* Purchase from the Crown.

Disputes betwixt him and the Tenants.

Sir *Corne'ius Vermuyden* having drained the Wastes, his Majesty conveyed the third Part thereof to him, and his Heirs and Assigns; and his Majesty, in Pursuance of the Articles, granted divers Commissions under the Great Seal, one whereof was directed to *William Viscount Ayre*, *John Lord Savile*, and others, to treat and agree with the Tenants and Inhabitants of all the Townships, Parishes, and Precincts, in and adjoining to the said Wastes and surrounded Grounds, who claimed Right of Common in the same, touching what Part of the Commons to be improved, they would accept in Satisfaction of their Right and Title to the Residue of the said Wastes and Commonable Grounds; which Commissioners agreed with the greater Part of the said Tenants and Inhabitants concerning the same, and allotted and set out to them several Parcels of Grounds and Wastes, to be by them held and enjoyed in Severalty, divided from the other two Parts thereof.

Sir *Corne'ius* having afterwards purchased the Manor of *Hatfield* of his Majesty, and the Residue of the Wastes and surrounded Grounds; divers Controversies arose between him and his Assigns of several Parts of the said Manor of *Hatfield* of the one Part, and the Tenants

Tenants and Inhabitants of the said Manor, and of the Towns of *Hatfield*, *Dunscroft*, *Woodhouse*, *Tudworth*, *Thorne*, *Sykehouse*, *Fishlake*, and *Stainforth*, in the said County, on the other Part; as well concerning their Copyholds within the said Manor and Towns, as their Demands of further perfecting the Work of draining the Grounds, and the Proportions and allotments claimed to be due to the said Inhabitants, and securing their Grounds from future Damage by Pretence of Draining: And divers Complaints being made before the Lords of his Majesty's most Honourable Privy Counsel thereof; the same were, in *June 1630*, referred to *Thomas Viscount Wentworth* and others, who, in *September* following, met there and viewed the Premises, and heard the Parties, and made an Award in Writing between them, to which some Exceptions being taken in some few Points thereof, further Differences arose between the said Parties; but, in *November* following, they compromised the Matter among themselves, and made a mutual and final Agreement, touching the Parts of the Award to be performed by *Sir Cornelius*.

In Order that the Tenants and Inhabitants might be decreed to stand to their Parts of the Award and further Agreement on their Behalf to be observed; *Sir Cornelius* exhibited his Bill, in his Majesty's Court of *Exchequer* at *Westminster*, against *Robert Portington*, and the several other Persons therein named, as Tenants and Inhabitants of the said Manor of *Hatfield*; to which Bill the Defendants appeared and put in their Answer, and confessed the Agreement and the several Articles of the Award in the Bill expressed, and consented to and allowed of such Parts thereof, and such further Agreements as were in the Bill mentioned and consented to have the same decreed; and to the End that *Sir Cornelius* might be also decreed to perform his Part of the said Award and Agreement, *Henry Lee* and the said *Robert Portington*, and divers of the Tenants and Inhabitants of the said Manor and of the said Towns, Villages, and Hamlets, exhibited their Bill, in the same Court, against *Sir Cornelius Vermuyden*, who appeared

June 1630.
Reference to Lord
Wentworth, &c.
Award and further
Differences.
November 1630.
Compromise.

Bill in the Exchequer
by *Sir Cornelius*
Vermuyden against
the Tenants and In-
habitants.

Cross Bill by the Te-
nants and Inhabitants

30 Nov. 1630.
Decree in both
Causes.

to the said Bill, and put in his Answer, and submitted, that the Award and the further Agreements might be decreed to be performed by all Parties.

The Causes came to be heard on the thirtyth Day of the same *November*; and thereupon the Court ordered that the Parts of the said Award and the further Agreements should be set down as they were agreed to on each Side; and the same were accordingly set down (amongst other Things) as follows; to wit, that the Tenants, their Heirs and Assigns, should have their Turf Moors, with all the Profits thereunto belonging, throughout the Waste of Turbary in such Manner and Form as they usually thentofore had, and their Copyhold Lands there without Admeasurement; and that there should be sufficient Ways left to the Moors for Carriages; and that those who should come to build or dwell upon the Ground of Sir *Cornelius*, his Heirs or Assigns, were only to have Liberty to cut Turf on 1000 Acres of Turf Moor towards *Crowle*, and 500 Acres towards *Sandtoft*, to be set out by Metes and Bounds; and the Turbary, called the *Lords Moors*, were likewise reserved to Sir *Cornelius* and his Assigns; but Sir *Cornelius* and the new Inhabitants were to take Turf in these Places only for their own Burning, and not for Sale; and the Tenants of the Manor, and the Members thereof, should have unto them and their Heirs, and such Persons and their Heirs as they should appoint, their former Allotments for their Common confirmed unto them according as they were set out by the first Commissioners the said Lord *Savile* and others, the fourteenth Day of March 1627, with an Addition of 200 Acres more in *Ditch Marsh* and 403 Acres of Land in *Ferne Carr*, to be assured unto the Tenants in exchange for 403 Acres in *Westmoore*. All which Parcels of Ground allotted, and to be allotted and exchanged with the Tenants, should be drained and so kept according to the Articles made between his Majesty and Sir *Cornelius Vermuyden*; and that Sir *Cornelius* and his Heirs, upon Request, should convey, or cause to be conveyed, unto such Feoffees, and their Heirs, as the Tenants, or the major

14 March
1627

major Part of them should nominate, such Part of the Moors, not holden by Copy of Court Roll and other Grounds within the said Manor as were allotted, to and for the Tenants to be holden in fee and common Socage; and that the Tenants should cause *Ditch Marsh* to be surveyed, so as it might appear, that they should have a full Moiety thereof, and 200 Acres more, and that the same should be set forth by the Referees, or any such two of them as aforesaid; so as it might lie conveniently for *Sykehouse* and *Fishlake*, as well as for *Thorne*, wherein Reguard should be had to accommodate Sir *Cornelius* and his Assigns, with Conveniences, as well for any new Draining to be made therein, as otherwise, without Prejudice unto the Tenants.

That the said Tenants and Inhabitants should have all Lanes, Ways, and Passages to continue to them, their Heirs, and Assigns in Common as formerly they had, and that they should not be charged with Payment of any Toll for Passage through the Lock, or any other Passage by Water or by Land; and that Sir *Cornelius*, his Heirs and Assigns, should cause all their Grounds to be sufficiently fenced and inclosed against the Allotments of the Tenants; and the further Demands of the said Tenants assented unto by the said Sir *Cornelius* not mentioned in the said Award, were (among other Things) as follows; to wit, That neither the said Sir *Cornelius* and his Tenants of the two Parts improved, nor their Heirs or Assigns, should have any Common in the third Part allotted and set out for the Use of the Tenants and Commoners; and that the Tenants and Inhabitants of the several Towns, Villages, and Places aforesaid, their Heirs and Assigns should have free Liberty to dig Clods, Earth, and Gravel in and upon the said Highways and Lanes, in Places fit and convenient, for their necessary Uses; and that the said Sir *Cornelius* and his Heirs should convey and assure unto the said Tenants and Inhabitants, their Heirs and Assigns, one Parcel of Marsh Ground, callen *Bramwith Marsh*, over and above the several Parcels of Marsh Ground allotted unto them by the Certificate of the said Lord *Savile* and

and others; and that the said Sir *Cornelius* and his Heirs, and his and their Tenants and Farmers, of such Copyhold Tenements as he had lately purchased from

Zamquer, one of the Daughters of the said Viscount *Ayre*, should enjoy Common of Pasture and Turbary, within the said Wastes and Moors allotted unto the said Tenants, according to the Custom of the Manor: And it was further agreed on both Sides, that according to the Certificate of the said Viscount *Ayre* and others, the said Tenants should have and enjoy these Parcels of Commons following; to wit, The *Westmore* containing 893 Acres, the *Lings* containing 210 Acres, *Woodfree Carr*, *Brickhill Carr*, and *Halehill Carr*, containing 347 Acres, *Rample Carr* 84 Acres, the *C'owns* 467 Acres, *East Tramlyngs* 202 Acres, *Brereham* and *Kirton Carr*, 380 Acres, *Bramwith Marsh* 35 Acres, *Burgarr* and *Hatfield Meere* 130 Acres, *Hatfield Hills* 66 Acres, a Piece of Ground called the *Common*, the further Side of the Water, 65 Acres, the *West Nabb* 138 Acres, *Kirk Town Nabb* 15 Acres, the Moiety of *Dykes Marsh*, and 200 Acres over: All which said Parcels of Ground the said Tenants and Inhabitants were, by the said Certificate, to hold to them and their several Heirs in Lieu and Recompence of their several Claims of Common in all the Rest of the said Wastes and Commonable Grounds; and thereupon afterwards, on the thirtieth Day of the same *November*, the said Court decreed in the Presence of the Counsel and Parties on both Sides, and with their mutual Consent, that the Parts of the said Award and Agreement before particularly expressed, and the said Certificate of the said Lord *Savile* and others, and every Part thereof (except as in the said Decree excepted) should from thenceforth be observed and performed by the said Parties; and that as well the said Sir *Cornelius*, and his Heirs and Assigns, as the said Tenants and Inhabitants, and all others the Tenants and Inhabitants of the several Towns, Villages, and Hamlets that then were, and that thereafter for the Time being should be, and their Heirs and Assigns should for ever thereafter be bound to

to observe and perform the said Parts of the said Award and Agreements by Virtue of the said Decree.

Afterwards by Indenture of Feoffment dated the fifteenth Day of July 1633, duly executed with Livery of Seizin, and made between the said Sir *Cornelius Vermuyden*, and *John Gibbon*, Esquire, of the one Part, and the said *Henry Lee*, *Roger Portington*, and several others therein named, Tenants of the said Manor, of the other Part, reciting the said Commission so granted to the said Viscount *Ayre*, and others, and the Allotment by them made as aforesaid; and the said Award so made by the said Viscount *Wentworth*, and other such Commissioners; and that his Majesty had granted to the said Sir *Cornelius Vermuyden*, the said Lordship or Manor of *Hatfield*, with all the Waste and Commons thereunto belonging; and that the said *John Gibbon* was lately become interested in the said Lordship under the said Sir *Cornelius*. It is witnessed, that the said Sir *Cornelius*, and *John Gibbon*, granted, bargained, aliened, fold, enfeoffed, and confirmed unto the said *Henry Lee*, *Roger Portington*, and others, their Heirs and Assigns for ever, all those Parcels of Ground before mentioned, as the same were allotted to the Tenants, and set forth as aforesaid, with the Appurtenances and all Commons; and Turf, Moors, Rights, Profits, Privileges, Emoluments and Commodities to the said Premises, or to any the Messuages, Lands, Hereditaments of any the said Tenants belonging; and all the Right, Title, Claim, Interest, Property and Demand of the said Sir *Cornelius Vermuyden* and *John Gibbon*, or either of them, of, in and to the same, " To hold, to them, their Heirs and Assigns for ever, to the only proper Use and Behoof of them, " their Heirs and Assigns for ever. Nevertheless upon " the special Trust and Confidence, and for the sole Benefit, Profit and Commodity of themselves and their " Heirs, and all and singular others the Tenants and " Inhabitants of *Hatfield*, *Thorne*, *Dunscroft*, *Stainforth*, " *Fishlake* and *Sykehouse*, and of all other the Tenants " and Inhabitants of, and within the said Manor or " Lordship of *Hatfield*, and of every of them severally.

G

" and

15 July 1633.
Feoffment.

Gibbon

" and respectively, to use and enjoy the same and every
 " Part and Parcel thereof as formerly they had done
 " or been accustomed to do, with Covenants of the Part
 " of Sir *Cornelius* and *Gibbon*, that the Premises were
 " free from former Bargains, Sales, Gifts, Grants, Join-
 " tures, Dowers, Statutes, Judgments, Intails, Rents,
 " and all other Incumbrances, and for farther Assurance,
 " whether by Fine, Feoffment, Deed inrolled or Reco-
 " very, or other Assurance, with Warranty against Sir
 " *Cornelius* and *John Gibbon*, and their Heirs, and all
 " claiming by, from or under them."

In pursuance of the Award, Agreements, Decree and Feoffment, the Tenants and Inhabitants of the said several Towns within the said Manor of *Hatfield*, have ever since till lately, quietly and without any Interruption held and enjoyed, all the said several Lands as aforesaid, allotted and conveyed to them, and their Heirs, or to the Use of them and their Heirs as aforesaid, together with all Ways, Easements and Profits thereto belonging; and also the Navigation up and down the River *Dunn*, within the said Manor, and without paying any Toll; and also haling and towing Paths there, up and down the said River, and fixing and mooring their Vessels and Ships to the Banks of the said River there, without Interruption till lately, and in the said Manner, as to the present River *Dunn*, as to the old River *Dunn*, in all Respects.

However the Tenants of the Manor of *Hatfield*, being greatly interrupted and disturbed by the Right Honourable *Arthur* Lord Viscount *Irwin*, and his Agents and Tenants, in the Enjoyment of the Lands allotted, and afterwards conveyed to them, or for their Use; and the Navigation within the Manor, and other Easements and Privileges which they were entitled to, and several Actions of Trespas having been brought against several of the Respondents and others, for Matters done in the Use and Exercise of their Rights, and the Tenants not being able to produce the said Indenture of Feoffment, (though one Part thereof was then in the Hands of *Thomas Gandy*, now deceased, then

Actions brought.

one

*As the river is now interrupted, as before
 therefore their destruction. It is shewn by the Title
 (as I have heard said) more have occurred in the inter-
 It is evident by the words of this title that the present
 River Dunn (now called the Dutch river) was then, as now,
 navigable for ships*

one of the Tenants of the said Manor, in Trust for himself, and the other Tenants and Inhabitants of the said Manor, and then the Steward or Agent of the said *Arthur Lord Irwin*, which he refuse to produce, or to permit the Defendant in the Action at Law, to have the Use or Benefit of.)

The now Respondents and several others then Tenants and Inhabitants of the said Manor of *Hatfield*, on the Behalf of themselves, and others the Tenants, Freeholders, and Copyholders, and Inhabitants of the said Towns of *Stainforth*, *Hatfield*, *Fishlake* and *Thorne*, within the said Manor of *Hatfield*, were compelled to bring their original Bill of Complaint in his Majesty's Court of Exchequer at *Westminster*, against Lord Viscount *Irwin*, *Thomas Canby*, and *Robert Jennings*, thereby stating the several Matters aforesaid; and thereby praying, that the former Decree might be carried into Execution, and that they, and the other Tenants and Inhabitants of the said several Towns within the said Manor, might be quieted in the Enjoyment of the several Lands allotted and conveyed to, and to the Use of the Tenants and Inhabitants of the said Manor as aforesaid, and of the Navigation up and down the said River *Dunn*, within the said Manor, together with all other Ways, Easements, Privileges and Profits whatsoever allotted to the Tenants and Inhabitants of the said Manor, by or under the said Agreements and Decree according to the true Meaning thereof, and for an Injunction in the mean Time to stay the Proceedings at Law.

To this Bill, *Arthur* late Lord Viscount *Irwin*, and the other Defendants appeared, and put in several Answers; and the said Lord *Irwin*, by his Answer (amongst other Things) insisted, that notwithstanding the Award, Agreement, Decree and Feoffment, he as Lord of the Manor was seized of and intitled to the Soil and Freehold of all the Lands allotted and conveyed to, or in Trust for the Tenants and Inhabitants; and that they were only intitled to the Herbage thereof, and to dispasture the same; and also the several Parts of the Lands claimed by the Bill, were not really allotted as aforesaid to

In Trin. Term 1731.
The Respondents
and other Tenants
file their Bill in the
Exchequer.

1731
at this Court
the petition of
Locke
was

The Answers.

to the Tenants and Inhabitants of the Manor; and the Defendant *Canby*, by his Answer admitted, that he had in his Custody one Part of the Deed of Feoffment, and submitted to produce the same at the Hearing; and *Robert Jennings*, as Tenant of Lord *Irwin*, insisted on a Right of Common in Part of the Lands claimed to be allotted to the Tenants.

Mich. Term, 17 G. II.
Bill of Revivor and
Supplement.

The Defendants *Arthur Lord Irwin*, *Thomas Canby*, and *Robert Jennings*, all died, and afterwards a Bill of Revivor and Supplement was exhibited against *Henry Lord Viscount Irwin* now the Appellant, *Mordecai Cutts*, and *John Robinson* and *Mary* his Wife, suggesting the Death of *Arthur Lord Irwin*, *Thomas Canby*, and *Robert Jennings*, and charging that the Appellant was Brother and Heir of the said *Arthur Lord Irwin*, and as such was intitled to the said Manor of *Hatfield* with the Appurtenances, and claimed the same Rights; and that *Mordecai Cutts* was the Executor of *Thomas Canby*, and had got into his Custody that Part of the Deed of Feoffment, which was in the Hands of *Thomas Canby*, and refused to produce the same; and that *Mary*, the Wife of *John Robinson*, was the Widow and Administratrix of *Robert Jennings*; and that *John Robinson* and *Mary* his Wife threatened to proceed at Law, and take out Execution on the Judgment obtained in the Action at Law brought by *Robert Jennings*; the Appellant, and also *Mordecai Cutts*, and *John Robinson* and *Mary* his Wife, appeared to that Bill; and the Appellant by his Answer admitted, that he was the Brother and Heir of *Arthur* late Lord *Irwin*, and that he claimed to be intitled to the said Manor for his Life, and derived such Title under the Will of the eldest Brother *Edward Machell*, and that such Title first accrued to him in Remainder after the Death of his elder Brethren *Richard* and *Arthur*, and had heard and did believe, that *Sir Cornelius Vermuyden* was Lord of the said Manor of *Hatfield*, but knew nothing more of the several Matters and Things contained in the Plaintiff's Bill, than what were disclosed, and set forth in the several Answers of the said *Arthur Viscount Irwin*, to which Answers he referred and submitted,

Answer to the Bill
of Revivor and Supplement.

submitted, that the Complainant's Bill, and the Proceedings had thereupon, should be revived against him; and *Mordecai Cutts* by his Answer admitted, that he had a Part of the Deed of Feoffment, and submitted to produce the same, but admitted that he had refused to produce it, that the Plaintiffs might have the Benefit of it; and all the Defendants submitted, that all the Proceedings should be revived against them, and the same were revived accordingly.

The Cause being at Issue, several Witnesses were examined; and their Depositions published, and afterwards on the twenty first Day of *April 1755*, the Cause was heard in the said Court of Exchequer, whereupon it was (amongst other Things) ordered and Decreed; that it should be referred to a Trial at Law in a feigned Action to be brought by the then Plaintiffs, now the Respondents, against the then Defendant *Henry Lord Viscount Irwin* now the Appellant, to try the following Issue (to wit) *first*, whether the Ground whereon the Turnpike in the Pleadings mentioned was erected, was or was not Part of the Tenants allotments. *Second*, Whether there was or was not at the Time of erecting the Turnpike, a Common Highway over that Ground. *Third*, Whether there was or was not at the Time aforesaid, a Way for the Tenants over that Ground, where the Turnpike stood from *Stainforth* to a Common Field called *Incroft* or *Kirk Town Nabb* or either, and which of them. *Fourth*, Whether the uninclosed Ground lying on the East Side of the River *Dunn*, and between the River and the great Bank, commonly called the *Participants Bank*, and extending from a Place called *Ealand Lane*, South, to a Place opposite to a Place called *new Went*, North, or any, and what Part thereof, was Part of the Tenants Allotment, which Issue were to be settled by the Deputy Remembrancer of the said Court, in Case the Parties differed therein, and were to be tried by a special Jury of the Court of *York*, and the Consideration of Costs, and all further Directions were reserved, till such Trial was had.

Afterwards, the then Plaintiffs waved the first and se-

H

cond

*Seemingly there is a
some long protestant
Law suits*

21 April 1755
Decree directing
Issues.

new Went

First and Second Issues waved by the Plaintiffs.

Third Issue waved by the Defendants.
Summer Assizes

1755.
The Fourth Issue tried, and a Verdict for the Respondents.

cond Issue, apprehending that by the fourth Issue all the Matters really in Question, and then in Dispute would be tried; and the then Defendants waved the third Issue, and the fourth Issue was settled and directed to be tried.

At the Summer Assizes 1755, the Issue was tried at York by a special Jury, and took up above eighteen Hours in the Trial; and upon full Evidence, as to the Right of the Soil of the Premises in Question, a Verdict was given for the then Plaintiffs now the Respondents, whereby it was found, that the said uninclosed Piece or Parcel of Ground, and every Part thereof, was Part of the said Lands and Grounds heretofore allotted to, and for the Benefit of the Tenants of the said Manor of *Hatfield*, entitled to Right of Common on the Waste and Commons of the said Manor.

On the thirteenth Day of *December* 1755, the Cause came on again to be heard in the Court of Exchequer, and the Deposition of *Robert Laverack* taken in the Cause on the Part of the Defendant, and other Evidence being offered by the Defendant's Counsel to be read to support their Construction, that there was in the Deed of Feoffment, a resulting Trust in the Lord of the said Manor, as to the Soil of the Lands and Grounds, thereby conveyed for the sole Use of the Tenants of the Manor, the Reading of which Deposition and other Evidence being objected to by the then Plaintiff's Counsel, the further hearing of the Cause was adjourned over to the then next *Tuesday*, (being the sixteenth Day of the same *December*) when the Cause came on again, to be further heard in Court; and on hearing Counsel on both Sides, the objections was allowed, and a Paper purporting to be a Copy of a Bill said to be filed in the said Court in the Year 1640, between *Perkins* and others, Plaintiffs, and *Ingram*, Defendant, being offered to be read, was rejected; whereupon the Cause was adjourned to be further heard on the then next Day, when the same came on again; and the said Defendant Lord *Irwin*, having by his Counsel insisted, that he as Lord of the Manor had a Right to the Soil of the Lands allotted to the Tenants, the Court over-ruled

13 Dec. 1755.
Cause came on to be heard on the Equity reserved after the Trial.

16 December.
Further heard.

17 December.
Decided.

ruled the same; and thereupon ordered and decreed, that the then Plaintiffs, now the Respondents, and the rest of the Tenants of the said Manor, Freeholders or Copyholders, and their Heirs and Assigns, should during the Life of the said Defendant *Henry* Lord Viscount *Irwin*, quietly and peaceably hold, use, occupy, and enjoy the said several Lands and Grounds mentioned in the said fourth Issue and Verdict, and every Part thereof, and all other Lands allotted and conveyed to them, or in Trust for them, according to the said Decree of the thirtyth Day of *November*, in the sixth Year of King *Charles* the First, and the said Deed of Feoffment against the then Defendant (now the Appellant) the Lord Viscount *Irwin*, as Lord of the said Manor, and that an Injunction be awarded under the Seal of the said Court to quiet them in the said Enjoyment, and to enjoy the said Defendant, his Agents, Servants, and Workmen, from interrupting or disturbing the same during the said Time; and that the said then Defendant (now the Appellant) should pay to the said then Plaintiffs (now Respondents) their Costs of the said original Bill and Bill of Revivor and Supplement; and the Costs at Law, and in Equity subsequent to the said Bill of Revivor to be taxed by the Deputy Remembrancer of the said Court; and also that the said *Mordecai Cutts* should bring into the said Court the said Deed of Feoffment, and that the same should be enrolled amongst the Records of the said Court; and that the said then Plaintiffs should pay to the said Defendant *Cutts* his Costs of the said Cause to be taxed, so much of which Costs were to be repaid to the said then Plaintiffs, by the said then Defendant the Lord *Irwin*, as were incurred to the Time of the said *Cutts's* Answer, who was also to pay to the then Plaintiffs (now Respondents) the Costs of the several Motions and Orders for producing the Feoffment, and also that so much of the Bill as related to the Plaintiffs Claim of the Ground, whereon the Turnpike therein mentioned stood, to be Part of the Lands allotted to the Tenants, or to be a Common Highway, be dismissed, with Costs to be taxed

ed

ed to be paid by the said Plaintiffs, to the then Defendant the Lord *Irwin*; and by Consent the said Bill was dismissed as against the said Defendants, *John Robinson* and *Mary* his Wife, but without Costs.

From which Decree *Henry Lord Irwin* hath appealed to your Lordships, and by his Appeal hath made four Objections.

First. As to such Part of the said Decree, whereby the Objections to the Reading of the Evidence offered on the Part of the Appellant was allowed.

Second. As to such Part of the Decree, as disallowed the Claim of the Appellant, as Lord of the Manor to the Soil of the allotted Commons, and on that Foundation ordered, that the then Plaintiffs, now the Respondents, should hold and enjoy the Lands found in the fourth Issue, and all other Lands allotted to the Tenants according to the Decree and Feoffment against the Appellant, and awarded an Injunction to quiet the Plaintiffs, now Respondents, in the Possession thereof, during the Life of the said Appellant.

Third. As to such Part of the Decree, whereby it is directed, that the Appellant should pay the Respondents the Costs of the original Bill, and the Bill of Revivor, with subsequent Costs at Law, and Equity.

Fourth. As to such Part of the Decree, as directs the Appellant to pay so much of the Defendant *Cutts's* Costs, as were incurred to the Time of the Answer of the Defendant *Canby*, and the Costs of the Motions and Orders about producing the Deeds of Feoffment.

The Respondents humbly apprehend, that there is not any Ground for the said Objections, or any of them (amongst many others) for the following

REASONS;

REASONS;

I.

Because every Part of the successive Transactions relative to the Improvement of the Waste Grounds and Commons in Question in this Cause, tends to confirm the legal Operation of the Feoffment, and to rebutt the resulting Trust of Ownership of the Soil pretended by the Appellant. When the original Project of draining and improving was first undertaken, the Crown agreed to grant one Third of the Lands as a Recompence to Sir *Cornelius Vermuyden* the Projector; at the same Time, Powers were given to proper Persons to treat with the Tenants and Inhabitants, who claimed Rights of Common, touching what Part of the LANDS, they would accept in Satisfaction of such Right, and Allotments were made accordingly. Upon the Disputes, which arose after the Purchase of the whole Estate by Sir *Cornelius*, an Award was made under a Reference from the Privy Counsel, and a Decree in the Exchequer, was founded upon that Award, and other subsequent Agreements. From the Term of that Decree, it is evident, that the former Allotments were confirmed with Additions, and new Exchange made. The Purchaser is directed to enfeoff Trustees in such Allotments and Exchanges, for the Benefit of the Tenants and their Heirs, in Lieu of all their Claims in the rest of the Waste and Commonable Grounds, to be held of the Lord of the Manor, in free and common Soccage. Upon the fifteenth Day of *July* 1633, the Feoffment is accordingly made to the Feoffees and their Heirs, to the Ule of them and their Heirs, upon special Trust and Confidence, and for the **SOLE BENEFIT, PROFIT AND COMMODITY OF THEMSELVES, AND THE OTHER TENANTS AND INHABITANTS.**

II.

The manifest Intent of the Feoffment was to confirm and effectuate an Exchange of the Right of Common,

in two Thirds of the Waste Lands, with the Right of Soil in the remaining one Third. The Tenants had originally a Right of Common over the whole; the Lord had likewise a Right in every Part of the Soil. On the one Hand, the Lord was encouraged to drain and improve, by being enabled to inclose free from the Right of Common; on the other Hand it was advantageous to the Tenants, to relinquish so large a Proportion of the Waste for the Sake of quietly enjoying one Third of it, improved and drained, under a Conveyance of the absolute Ownership of the Soil, discharged from the Right of the Lord.

III.

It was the Intent of the Parties to secure only a Right of Common in one Third of the Waste, still liable to the Lord's Right of ownership in the Soil; the proper Method had been, not for the Lord to enfeoff Trustees for the Tenants in one Third of the Waste, but for the Tenants to have executed Releases of their Right of Common, on two Thirds of it to the Lord, reserving to themselves the free Enjoyment of such Right of Common, as they were accustomed to have, on the remaining Third; or the Court, in Consequence of the Award and Agreement, might have decreed the Lord to hold and enjoy the two Thirds free from any Right of Common or otherwise in the Tenants; and that the Tenants should enjoy their Right of Common in the remaining third Part, exclusive of the Lord. There would be on Occasion in this View for the Solemnity of a Feoffment, and the Interposition of Trustees. If the Soil was not to be absolutely conveyed, the original customary Enjoyment, and the Right of Common in the remaining Third, was a better Title than any new Conveyance from the Lord, subject to be restrained and limited in the Operation of it, by his Words of Grant. The vesting of the entire Property of the Soil in Trustees, as a Trust for the Tenants, was the Object of this Feoffment; because it was the only effectual Method of securing them from future Vexation, as to Pretences of digging the Waste, surcharging the
Common,

Common, and doing other Acts, which might produce Contests.

IV.

The Parol Evidence offered in this Cause to shew Acts of Ownership done, and an Exercise of the Lord's Rights upon the allotted Lands, long since the Time of the Decree and Feoffment, was rejected by the Court; because it is contrary to the Rules of Law, to set up a resulting Trust, by Parol Evidence, where the plain Words of the Deed have disposed of the whole Trust or beneficial Interest in the Land; as it would render all Titles to Estates precarious and insecure.

V.

The Appellant Lord *Irwin* having set up a Defence both in Law and Fact, which could not be supported, and having insisted on a Trial at Law, in which a Verdict went against him, and the Respondents having been put to very great Expences thereby; it is apprehended, that the Court was in some Measure bound to give the Respondents their Costs. For although the giving or refusing Costs is discretionary in Courts of Equity, yet unless there is something very particular in the Case to vary the Rule, Costs always follow the Right.

C. YORKE.

GEO. PERROTT.

N. B. We are particularly requested to remind the Readers that a Trial respecting some Claim of the late Lords of the Manor to Part of the Commons allotted by the Decree to the Tenants and Inhabitants of the said Manor of *Hatfield*, the Trial after various Hearings elsewhere, came to an Issue at *York*; the Result of which was as follows.

Which Issue (after a View had by a Special Jury) was tried at *York*, and took up above eighteen Hours; when, upon full Evidence as to the Right of the Soil and Enjoyment thereof, a Verdict was given for the Inhabitants,

Summer Assizes 1755.

Inhabitants, and that the whole Place in Issue was a Part of the Ground allotted and conveyed to the said Inhabitants.

13, 16, and 17
Decem. 1755.

The Equity reserved came on to be heard in the Court of Exchequer, and, upon hearing Counsel on both Sides, the Court, on *Wednesday* the seventeenth Day of *December*; 1755, decreed, That the Inhabitants should hold and enjoy the Lands mentioned in the Issue and Verdict, and all other the Lands allotted and conveyed to or in Trust for them, according to the Decree of the thirtieth Day of *November*, 1630; and that the said Deed of Feoffment should be enrolled amongst the Records of the said Court, which was enrolled accordingly.

From which Decree Lord *Irwin* appealed to the House of Lords; and, upon hearing the said Appeal, 4 Dec. 1758. the said House, on *Monday* the fourth Day of *December*, 1758, without Hesitation, affirmed the Decree, with Sixty Pounds Costs.

Earliest date of Com^{rs} Settlements of Drainage accounts
1827
latest 1758

181 years - Thus such a long period of
difficulties - draining Low lands
in addition to enormous expense in
draining & embanking against the
Tide and perhaps a ruinous interest

FINIS.

in money from over purchasing
together with the slow return of
improvement now received, & it
being perhaps too truly said that
the noble minded Country gentry
were all too much occupied with
their duties in the
workhouse at Tipton